NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

EDWARD G. SPRANGER,

PLAINTIFF-APPELLANT,

V.

MARVIN T. RUNYON, POSTMASTER

GENERAL, DEFENDANT-APPELLEE

MEMORANDUM

NO.96 - 16934

D.C. NO. CV-96-00508-DFL

Appeal from the United State District Court for the Eastern District of California David F. Levi, District Judge, presiding

Submitted April 21, 1997

Before: BROWNING, THOMPSON and HAWKINS, Circuit Judges

Edward G. Spranger appeals pro se the district court's dismissal for lack of jurisdiction over his action under Federal Employees Compensation Act,

5 U.S.C. 8101 et seq., seeking sick leave, back pay, expungement of his personnel records and reinstatement to his former employment with the United

States Postal Service. We affirm for the reasons stated by the district court in its Order filed on September 6, 1996.

AFFIRMED

FILED On April 28, 1997

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

EDWARD G. SPRANGER,

Plaintiff,

V.

MARVIN RUNYON, POSTMASTER GENERAL, Defendant

NO: CIV-S-96-508 DFL GGH

September 4, 1996

RE: Order

United States District Judge

David F. Levi

In this action, plaintiff Edward G. Spranger seeks to relitigate the question of whether he should be reinstated to the position from which he was terminated over seven years ago. This court has no jurisdiction over Spranger's claim.

I. PROCEDURAL HISTORY

On October 6, 1988, plaintiff Edward G. Spranger complained to his supervisor that he had

injured his back. He was referred to the medical unit, then returned to work. Approximately six hours later, Spranger asked his supervisor for sick leave for the remainder of the day. His supervisor asked him to go to the medical unit, to determine the extent of Spranger's potentially work-related injury. Spranger refused, and left the postal facility without visiting the medical unit as instructed.

On November 28, 1988, Spranger was terminated from his position. The termination was based on his extensive history of insubordination, and the specific incident on October 6 where Spranger left without permission.

Spranger sought reinstatement to his former position. The Postal Service denied reinstatement on the grounds that Spranger had been terminated for just cause. The Merit Systems Protection Board denied Spranger's appeal. Spranger also appealed his termination through the Postal Service's Equal Employment Opportunity process, claiming race,

sex, physical handicap, and reprisal discrimination. A union grievance was also filed. Both the EEO proceeding and union grievance upheld Spranger's termination. The EEO proceeding was appealed to the Merit Systems Protection Board, which upheld the termination. This decision was appealed to the EEOC, which found no discrimination.

Meanwhile, on December 19, 1989, Spranger obtained an order from the Office of Workers' Compensation Programs authorizing compensation for his October 6, 1988 wor injury. See "Objection to Defendant's Motion to Dismiss." Exh. B.

Spranger then filed suit in United States District Court. In his complaint, Civ.-S-90-1595 DFL, Spranger alleged among other things that (1) "the Postal Service abused its discretion by refusing to restore plaintiff to his job," and (2) "the MSPB erred in finding the plaintiff is not entitled to restoration to his Postal Service job (restoration claim) . . ." Order (in Civ. - S- 90- 1595) filed July 31, 1991, p.5, attached as Exh. A to Mot. to

Dismiss. Each of his claims for restoration were dismissed, including a claim that the MSPB should have granted him reinstatement because of the December 19, 1989 OWCP order.

Spranger appealed the dismissal of the district court action. The Ninth Circuit affirmed. The Ninth Circuit specifically rejected Spranger's argument that "he is entitled to be restored to employment under the Federal Employees Compensation Act, 5 U.S.C. 8101, 8151, because he recovered from a work-related injury within a year of his discharge." Memorandum Op. of Ninth Circuit in Civ. -S-90-1595, attached as Exh. C to Mot. to Dismiss, p.2.

A year and a half later, Spranger filed suit here, seeking restoration to his former position, a change of records changing his "absent without leave" to "sick leave" (eliminating the basis for his discharge, and thus entitling him to reinstatement), and a payment to the retirement fund.

II ANALYSIS

The Civil Service Reform Act ("CSRA") creates "a single unified personnel policy which takes into account the requirements of all the various laws and goals governing Federal personnel management." See Saul v. U.S., 928 F.2d 829, 833 (9th Cir. 1991) (quoting legislative history). The act provides a procedure by which federal employees can challenge the personnel decisions of their supervisors. Id. The CSRA creates a merit system for federal employees, that protects employees from arbitrary action and personal favoritism. Id. Because it provides a comprehensive remedy for federal employees challenging adverse employment decisions, the CSRA preempts all claims for actions within its scope. Id.

Here, Spranger is seeking a remedy provided by the CSRA. Although he couches his complaint in terms of the Federal Employees Compensation Act ("FECA"), in fact he is challenging personnel decisions, and not seeking worker's

compensation benefits. Claims for reinstatement to a federal position are within the scope of the CSRA. Id.

Claims regarding suspension of pay, or to change a record of absence without leave, are likewise within the scope of the CSRA. Green v. Hill, 954 F. 2d 694 (11th Cir. 1992); see also Saul v. U. S., 928 F.2d 829,833 (9th Cir. 1991). Because Spranger's complaint seeks relief available only through the procedure provided by the CSRA, these claims are dismissed.

Spranger is required to make these claims, even if they are based on FECA, within the remedial system established by the CSRA. See American Postal Workers Union v. USPS, 940 F.2d 704, 709 (D.C.Cir. 1991) (CSRA is exclusive remedy for postal workers challenging their discharge, whether their claim is based on Postal Reorganization Act, CSRA, or FECA). Indeed, Spranger cites six cases in which claims based on

5 U.S.C. 8151 (a FECA provision) were litigated through the CSRA procedure before the Merit Systems Protection Board. Crawford v. Veterans Affairs, 22 M.S.P.R. 380 (1984); Mainor v. Dept. of 28the Navy, 38 M.S.P.R. 528 (1988); Stith v. DHUD, 21 M.S.P.R. 328 (1884); Polk v. Dept of Army, 40 M.S.P.R. 539 (1989); Green v. Dept. of Army, 38 M.S.P.R. 52 (1988); Raicovich v. USPS, 675 F.2d 417 (D.C.Cir. 1982)

Spranger claims that this suit is authorized by the general jurisdictional statute conferring jurisdiction over cases involving the Postal Service, and that he has "exhausted all the administrative remedies available to him." Complaint, 5. However, "the arbitral and administrative procedures recognized and created by the CSRA . . .are the exclusive means of redress from a discharge from federal employment . . , thus barring independent federal district court jurisdiction under other statutes altogether." Carter v. Kurzejeski, 706 F.2d 835, 839 Cir(8thCir.1983)

Finally, even if Spranger's claims arise solely under FECA this court lacks jurisdiction over these claims. See 5 U.S.C. 8128(b). This court also notes that plaintiff raises matters in this litigation which should have been raised, if at all, in the prior federal court complaint.

III CONCLUSION

Plaintiff Spranger seeks to relitigate matters previously decided against him. For the reasons stated above, the complaint is DISMISSED. Judgment shall be entered accordingly.

IT IS SO ORDERED.

SEPTEMBER 4, 1996

DAVID F. LEVI

United States District Judge